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FISCAL IMPACT STATEMENT

LS 6274

BILL NUMBER: HB 1155

NOTE PREPARED: Jan 16, 2014

BILL AMENDED: Jan 16, 2014

SUBJECT: Expungement.

FIRST AUTHOR: Rep. Turner

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

A. *Arrest Records* - It relocates and restates certain provisions dealing with the expungement of arrest records, and deletes inconsistent language. (Under current law, there are two inconsistent procedures for expunging arrest records.)

B. *Petition for Expungement* – The bill specifies where a petition for expungement must be filed, and removes the prohibition against a waiver or reduction of the filing fee for an indigent person.

C. *Access to Expunged Records* – It grants a defense attorney and a probation department access to expunged records if authorized by court order.

D. *Subsequent Petition for Expungement* – It allows a court to accept filing of a subsequent petition for expungement that includes convictions not named in the original petition under certain circumstances.

E. *Evidence Standard* - The bill provides that a court must find by a preponderance of the evidence instead of by clear and convincing evidence that all the requirements of expungement have been met to order a person's conviction records marked as expunged.

F. *Plea Agreement* - It prohibits a person from waiving the right to expungement as part of a plea agreement.

(The introduced version of this bill was prepared by the Criminal Law and Sentencing Policy Study Committee.)

Effective Date: July 1, 2014.

Explanation of State Expenditures:

Explanation of State Revenues: *Petition for Expungement* – Under current law, a person who files a petition to expunge a conviction record is required to pay a civil filing fee regardless of whether the person is indigent. As proposed, the person is not required to pay a civil filing fee. Depending on the number of petitions for expungement, this bill could reduce the revenue that is generated by the civil filing fee.

A civil costs fee of \$100 is assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$7) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: (Revised) *Records* – Under current law, courts and law enforcement agencies follow two different procedures depending on the outcomes of certain arrests.

If the arrest leads to no criminal charges or if any criminal charges are subsequently dropped because of mistaken identity, no offense had been committed, or if there was an absence of probable cause, then all records related to fingerprints, photographs, or arrest records are either delivered to the person who was arrested or destroyed.

If the arrest did not result in a conviction or juvenile adjudication or resulted in a conviction or juvenile adjudication that was later vacated on appeal, then the records are sealed.

As proposed, the physical records of the arrest in either case would either be delivered to the person arrested or physically destroyed by the arresting agency.

The bill could minimally increase costs for the court to order various agencies to expunge records of a conviction or that concern the released person, to seal records, and to make notifications to the clerk of the Supreme Court. Also, agency costs to remove and destroy records would minimally increase, and the court could have some minimal additional notification costs.

Explanation of Local Revenues: *Petition for Expungement*– [See *Explanation of State Revenues.*] If additional civil actions decline, revenue to local governments would decline. The county general fund receives 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Indiana State Police.

Local Agencies Affected: Trial courts; Local law enforcement agencies; Probation departments.

Information Sources:

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